

DRAFT
ASSIGNMENT OF CABLE FRANCHISES
CONSENT AGREEMENT

This Agreement is entered into effective as of the Effective Date (as defined in Recital D below), by and among WaveDivision V, L.L.C., a Washington limited liability company (“WaveV”), WaveDivision Holdings, L.L.C., a Delaware limited liability company (“WaveDivision”) and the City of Seattle, a Washington municipal corporation (“City”).

RECITALS

A. The City and Millennium Digital Media Systems, L.L.C. (“Millennium”) are parties to cable franchises authorized under Ordinances 117955 and 118361, as amended, and as transferred to Millennium under Ordinance 119295 (collectively, the “Franchises”), whereby the City granted cable television franchises to Millennium to construct, maintain and operate a cable television system in certain cable franchise districts in Seattle.

B. On February 8, 2006, Millennium (and its affiliates) and WaveDivision entered into a Unit Purchase Agreement (“Unit Purchase Agreement”) whereby Millennium agreed to contribute the cable system facilities and other assets within the City that Millennium owns and operates pursuant to the Franchises (the “Cable System”) to WaveV, a limited liability company that will be formed by and initially owned by Millennium, and immediately after such contribution Millennium shall sell to WaveDivision all of the membership interests of WaveV.

C. Section 14 of the Franchises and Subsection 21.60.520 of the Seattle Municipal Code provide that neither a cable franchise nor a cable system operated thereunder may be transferred to another person without the approval of the City. The transactions described in the Unit Purchase Agreement each constitute a “Transfer” as that term is defined in the Franchises.

D. On February 10, 2006, Millennium and WaveDivision submitted an application (the “Application”) for the City’s consent to the transfer of the Franchises from Millennium to Wave V and the sale of all of the membership interests of WaveV from Millennium to WaveDivision (the transfer and sale are referred to herein collectively as the “Assignment” and the date on which the Assignment is consummated is referred to herein as the “Effective Date”). Following the receipt of the additional information, the City deemed the Application complete on April 10, 2006.

E. On _____, 2006, the Seattle City Council adopted the ordinance introduced as Council Bill _____ (Ordinance _____) conditionally approving the Assignment subject to execution of this Agreement by WaveV and WaveDivision.

In consideration of the City’s approval of the Assignment and subject to the terms and conditions of this Agreement, the parties hereto agree as follows:

AGREEMENTS

1. Consent. Subject to the terms and conditions of this Agreement, City consents to the Assignment as specified in the Application. The parties agree that the City acted on the Application in a timely manner under federal law. This Agreement shall be null and void if a duly authorized officer or agent of WaveV fails to deliver the notice required pursuant to Section 4.8 in a timely manner.

2. Reservation of Rights. The City reserves all rights not expressly granted in this Agreement. In particular, and without limitation:

2.1. Neither this Agreement, nor any other action or omission by the City at or before the execution of this Agreement, shall be construed to grant the City's consent to any future transfer of the Franchises or the cable system, and/or change in ownership and/or control of WaveV or WaveDivision, or to mean that the City's consent to any future transaction that is required by the Franchises is otherwise not required.

2.2. As a result of the Assignment, the City waives none of its rights with respect to Millennium's compliance with the terms, conditions, requirements and obligations set forth in the Franchises and Title 21, Chapter 21.60, of the Seattle Municipal Code (the "Franchise Documents"), including the City's right to compel Millennium or its successors in interest to comply with the provisions of the Franchise Documents. The City's approval of the Application shall in no way be deemed a representation by the City that Millennium or its successors in interest are in compliance with all of its obligations under the Franchise Documents; provided however, the City will look initially to WaveV and WaveDivision for full performance of all the obligations under the Franchise Documents from and after the Effective Date.

3. Compliance with Franchise.

3.1 As of the Effective Date, WaveV hereby accepts, acknowledges, and agrees to be bound by all terms and conditions of the Franchise Documents and to assume all current and future commitments, duties, liabilities and obligations of Millennium thereunder. Each of the parties hereto further agrees that neither the Assignment nor the City's consent thereto shall diminish or otherwise affect Millennium's or WaveV's commitments, duties, liabilities and obligations embodied in the Franchise Documents except as may be expressly provided herein.

3.2. As of the Effective Date, WaveV agrees to comply with all provisions of the Franchises and all applicable provisions of the City's Municipal Code and federal and state law, to the maximum extent required by law.

3.3. As of the Effective Date, WaveDivision agrees that it shall cause the Grantee (as defined by SMC Chapter 21.60) to fully comply with all of the terms and conditions set forth in the Franchise Documents and this Agreement, including, but not limited to, the provision of books and records as required by the Franchise Documents and federal and state

law, regardless of whether those books and records are maintained by WaveV, WaveDivision or an affiliate.

3.4. WaveV agrees that neither the Assignment nor the City's approval of the Application shall in any respect relieve the Grantee of responsibility for past acts or omissions, known or unknown. The City hereby confirms to WaveV and WaveDivision that to the best of its knowledge the only defaults, deficiencies or breaches of the Franchises are described in Section 3.7. Notwithstanding the foregoing, due to the number and type of violations found during the preliminary technical audit discussed in Section 3.7, the City believes that there are more widespread technical violations relating to the cable system and will proceed with conducting a more comprehensive technical audit of the cable system as part of the transfer process.

3.5 Wave V, while it or its affiliates hold the Franchises, agrees to provide monthly Internet service at no cost to (i) those community technology sites required under the Franchises and which are otherwise set to expire as of December 31, 2006, and (ii) such other community technology sites mutually agreed to in writing by the City and WaveV; provided the number of other community technology sites designated pursuant to clause (ii) hereof shall not exceed fifty (50) different locations and WaveV shall not unreasonably disagree regarding sites proposed by the City to be served. Complimentary Internet service shall consist of (i) a line extension to the building; (ii) one drop to a room specified by the organization; (iii) technical and customer service support to ensure the service and equipment is in working order; and (iv) static IP addresses as requested. Complimentary Internet service shall be installed and activated within 30 days of a request from the City unless an alternative schedule is mutually agreed upon. In addition, WaveV agrees to engage in good faith discussions with the City regarding the provision of technology training support / classes at City-sponsored community technology sites; provided that any support to be contributed by WaveV shall be only as mutually agreed in writing by WaveV and the City.

3.6 Wave V, while it or their affiliates hold the Franchises, agrees to continue to provide a discount on cable services and related equipment to subscribers with low incomes as required by the Franchises and Ordinance 121458. WaveV acknowledges that cable service discounts will be one element of negotiations during the franchise renewal process for the Franchises that are due to expire in 2008.

3.7 The City has discovered as a result of the spot testing recently performed by Columbia Telecommunications Corporation ("Columbia"), a copy of which test results are attached hereto as Attachment I, that the Cable System does not meet certain technical qualifications as required under the Franchises and federal law and the City has formally notified Millennium of the technical and other outstanding violations in a Notice from the City to Millennium dated May 22, 2006. The City understands that the correction of these technical and other deficiencies may not be completed prior to the Effective Date and, accordingly, the City specifically (i) reserves the right to compel Millennium or its successors in interest to correct franchise violations including the technical deficiencies identified by Columbia and the City as described in the Notice from the City to Millennium dated May 22, 2006, and (ii) requires that WaveV implement a sweep of the cable system immediately following the Effective Date to

uncover any technical or safety violations under applicable federal or local laws and regulations and to take appropriate corrective action. In addition, WaveV shall reimburse the City for one-half of the reasonable cost and expense, including all outside legal and testing costs, related (i) to the additional testing of the technical facets of the Cable System by Columbia or other qualified technical review specialists and (ii) to the re-testing of the technical facets of the Cable System which were found to be deficient as of the date hereof or are found to be deficient at a later date; provided that WaveV's reimbursement obligation for such services shall not exceed \$25,000. WaveV's failure to correct the technical deficiencies or take corrective action as outlined above shall be considered a material breach of its Franchises subject to the remedies provided therein.

4. Guaranty.

4.1. Obligations Guaranteed. In consideration of the City's approval of the Assignment, WaveDivision hereby absolutely, irrevocably and unconditionally guarantees the full and faithful performance by WaveV of all of the terms, covenants, conditions and agreements contained in the Franchises and this Agreement subject to Applicable Law. For purposes of this Agreement, "Applicable Law" shall mean any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order which has been issued, executed, entered and deemed applicable to City, either specifically or by reference to a class including City, by any court of competent jurisdiction or other federal or state department, commission, board or agency.

4.2. Representations and Warranties. WaveV and WaveDivision hereby represent and warrant that:

A. WaveDivision has investigated fully whether any benefit or advance will inure to WaveDivision by reason of the execution of this Agreement, and has determined that a direct or indirect benefit will inure to WaveDivision by reason of the execution of this Agreement.

B. This Agreement is a legal, valid and binding agreement of WaveV and WaveDivision that is enforceable in accordance with its terms.

C. The Franchises are legal, valid and binding and enforceable against WaveV in accordance with their terms, subject to Applicable Law.

D. The financial statements of WaveDivision for the twelve months ended December 31, 2004 and the nine month period ended September 30, 2005, heretofore delivered to the City are true and correct in all material respects, and fairly present the financial position or results of operations, as the case may be, for the periods or as of the dates indicated on such statements, and no material adverse change has occurred in the financial condition of WaveDivision since the date thereof.

E. WaveV and WaveDivision each has the full right, power and authority to execute and deliver this Agreement, and to perform the undertakings contained herein and the transactions contemplated hereby, and all corporate or other action necessary to authorize the execution and

delivery of this Agreement, and the performance of the undertakings contained herein and the transactions contemplated hereby, have been taken.

F. No approval, consent, exemption or other action, or notice to or filing with, any governmental or public body or authority is required in connection with the execution, delivery, performance and enforcement of this Agreement.

4.3. Authority of the City and/or WaveV. WaveDivision hereby agrees that subject only to the provisions of the Franchises which have been agreed to by WaveV, the City and WaveV may in such manner, upon such terms and at such times as the City and WaveV mutually agree and deem best and without notice to WaveDivision (a) alter, modify, compromise, accelerate, extend or change the time or manner for the performance of any obligation hereby guaranteed, or otherwise change any term of the Franchises or (b) add any one or more guarantors or endorser. Unless in a writing signed by the City and WaveDivision, no exercise or nonexercise by the City of any right given it by this Agreement, no dealing by the City with WaveV or any other guarantor, endorser or any other person, and no change, impairment, release or suspension of any right or remedy of the City shall in any way affect any of the obligations of WaveDivision hereunder. If the City has now exculpated or hereafter exculpates WaveV from liability in whole or in part other than in a writing signed by WaveV and/or WaveDivision, such exculpation and agreement shall not affect the obligations of WaveDivision under this Agreement, it being understood that WaveDivision's obligations hereunder are independent of the obligations of WaveV and are to be construed as if no such exculpation or agreement had been given to WaveV by the City. WaveDivision further acknowledges and agrees that if any such exculpation or agreement has been given by the City in a writing signed by WaveV, the City has done so in reliance upon the agreements of WaveDivision expressed herein. In any action by the City to enforce this Agreement against WaveDivision, WaveDivision shall bear the burden of establishing the existence and terms of such a written exculpation of WaveV and/or WaveDivision by the City.

4.4 Waivers by WaveDivision. WaveDivision hereby expressly waives and relinquishes any and all defenses to enforcement of this Agreement including without limitation (a) any right to require the City, as a condition precedent or concurrent to enforcement of this Agreement, to proceed against WaveV or any other person or to pursue any other right or remedy in the City's power before proceeding against WaveDivision; (b) notice of the acceptance of this Agreement by any person; (c) demand, notice of default or nonpayment, presentment, protest, and all other notices of any kind to which WaveDivision might otherwise be entitled in connection with this Agreement, including, but not limited to, notice of the existence, creation or incurring of any new or additional obligations or of any action or nonaction on the part of WaveV; (d) any defense based upon an election of remedies by the City or any other act, actions, or failure to act by or on behalf of the City which destroys or otherwise impairs the subrogation rights of WaveDivision or the right of WaveDivision to proceed against WaveV for reimbursement, or both, including any defense available to WaveDivision to a deficiency judgment arising from the destruction of WaveDivision's subrogation rights; (e) any defense based upon any statute or rule of law which provides that an offer of performance exonerates a surety; (f) any defense arising because of the City's election, in any proceeding instituted under the federal Bankruptcy Code, or the Application or Section 1111(b)(2) of the federal Bankruptcy Code of 1978, as amended; and

(g) any defense under Section 364 of the federal Bankruptcy Code of 1978, as amended, it being agreed by WaveDivision that the failure of the City to exercise any rights or remedies it has or may have against WaveV shall in no way impair the obligation of such Agreement and that the liability of WaveDivision hereunder is and shall be direct and unconditional.

4.5. Independent Investigation by WaveDivision. WaveDivision understands and agrees that WaveDivision is fully responsible for being and keeping informed of the financial condition of WaveV and of all circumstances bearing on the risk of nonperformance of any obligations hereby guaranteed.

4.6. Remedies Cumulative. Except as expressly provided, all rights, power and remedies of the City hereunder shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to the City by law. This guaranty is in addition to and exclusive of the guaranty of any other guarantor of any obligations of WaveV to the City.

4.7. Actions. The obligations of WaveDivision hereunder are independent obligations of WaveDivision and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against WaveDivision, whether or not WaveV is joined therein or a separate action or actions are brought against WaveV. The City may maintain successive actions for other defaults. This Agreement may be enforced by an action against WaveDivision, without the necessity of joining in such action any other WaveDivision obligations guaranteed hereby. The City's rights hereunder shall not be exhausted by exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations the performance of which are hereby guaranteed, have been fully performed.

4.8 Notice Regarding Closing. Within five (5) business days of the Effective Date, WaveV or WaveDivision (if WaveV is not currently in existence) shall notify the City of the pending consummation of the Assignment. At such time, all of the pre-conditions and requirements of this Agreement, if and to the extent such requirements as provided herein or in related Assignment documents are to be executed, met or completed prior to the Effective Date, shall be executed, met or completed.

4.9 Certificate of Authority for WaveV. Within five (5) business days of the filing of the WaveV Certificate of Formation with the Washington Secretary of State, WaveV or WaveDivision shall notify the City by providing the City with a Washington Certificate of Existence/Authorization for WaveV.

4.10 Reimbursement for Out of Pocket Expenses. WaveV hereby agrees to reimburse the City for all reasonable out of pocket expenses incurred by the City, including all costs incurred by the City for outside consultants, related to the Assignment.

5. Renewal. Except as specifically provided herein, this Agreement shall not have any effect on the City's authority to enforce the Franchise Documents. Further, this Agreement shall not have any effect on any authority the City may have to review, conditionally approve or deny the renewal of the franchises granted to WaveV. The City expressly reserves its rights to

conduct a complete renewal proceeding pursuant to 47 U.S.C. § 546, including but not limited to, conducting a complete review of WaveV's compliance with, and performance under, the Franchises and any other obligation WaveV may have under federal or local law, beginning from the Effective Date through the end of each Franchise term, March 8, 2008, and including, without limitation, any Franchise term extensions thereto up to and including during the franchise renewal process, and to conditionally approve or deny a renewal based on any such failure, noncompliance or violations.

6. Rates. WaveV and WaveDivision agree that the Assignment will not result in an increase in the rate for basic cable service. Nothing shall prohibit rate increases made in the ordinary course of business in compliance with local, state and federal law that are not caused by the Assignment. WaveV and WaveDivision agree that it will not rely upon an increase in debt service or in debt service coverage, if any, that results from the Assignment to justify an increase in rates for regulated cable services.

7. PEG Access Financial Support. WaveV acknowledges that financial support for public, education and government (PEG) channels will be one element of negotiations during the franchise renewal process for the Franchises that are due to expire in 2008.

8. Local Office. As a condition of this Agreement, WaveV agrees to maintain one local office as required by SMC 21.60.820; it being understood and agreed that WaveV's assumption of the pay station agreement (or a successor agreement approved by the City) between the City and Millennium shall serve as an acceptable substitute for a local office.

9. Representations and Warranties. WaveDivision and WaveV acknowledge and agree that the City's consent to the Assignment is made in reliance upon the written information provided by WaveDivision and WaveV, including but not limited to the Form 394 and supplemental information. WaveDivision and WaveV represent and warrant that the foregoing information and representations are true and accurate, and omit no material information the absence of which would cause the information provided to be materially misleading. WaveDivision and WaveV also represent and warrant that WaveV, upon the consummation of the Assignment, will be a wholly-owned subsidiary of WaveDivision and that at the time of consummation of the Assignment each such entity is duly organized, validly existing and in good standing under the laws of the states in which they were formed, and that they are qualified to do business within the State of Washington.

10. Franchise Fee Review. WaveV agrees that it will properly calculate and remit to the City the franchise fees in accordance with the Franchises. WaveV also agrees that, absent written notice to the contrary from WaveV, the City will not have to set the franchise fee credit annually by ordinance, as required by Subsection 11.2 of the Franchises, unless it wishes to alter the franchise fee credit from the credit established by ordinance in 2006.

11. Enforcement. Any violation of this Agreement shall be deemed a violation of the Franchises subject to the remedies provided in the Seattle Municipal Code as well as other remedies provided by law or in equity. Any action to interpret or enforce any provision in this Agreement, the Franchises or the Seattle Municipal Code may only be brought in a court of

competent jurisdiction in Washington, and the parties agree to be subject to the jurisdiction of Washington state and federal courts for such purposes. This Agreement shall be governed by the law of the State of Washington.

12. Authority. Each of the persons executing this Agreement certifies that they are authorized by the respective party to execute this Agreement and to bind that party.

13. Notices. All notices required or permitted under the Franchise Documents shall be delivered in the manner provided in Section 21.8 of the Franchises, except that the address for the "Grantee" thereunder is hereby changed to the following:

WaveDivision V, LLC
Attn: Steve Weed and Jim Penney
401 Kirkland Park Place, Suite 410
Kirkland, WA 98033

14. Insurance. Prior to the earlier of the Effective Date or the commencement of any activity whatsoever relating to the operation of the Cable System, WaveV shall provide the City with certificates of insurance and original endorsements evidencing insurance coverage in accordance with Section 12.2 of the Franchises and Attachment II to this Agreement.

15. Security Fund. In lieu of the security fund required under Section 12.4(A) of the Franchises, WaveV shall provide and maintain a bond, a cash security deposit, or an irrevocable letter of credit upon execution of this Agreement, in the amount of One Hundred Thousand Dollars (\$100,000) to guarantee performance of Franchise obligations, of which no less than \$10,000 shall be in the form of a cash security deposit or letter of credit.

16. Effect on Franchise. This Agreement shall have no effect on the Franchises except as specifically provided in this Agreement.

17. Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute an agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

18. Binding Agreement. This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns. This Agreement shall be effective only upon the execution of this Agreement by all parties hereto. Any purported assignment of this Agreement is void without the express written consent of the parties hereto.

19. Reliance on Own Judgment. Each of the parties represents that in executing this Agreement it relied solely on its own judgment, belief and knowledge, and upon the advice and recommendations of its own independently selected counsel, concerning the nature, extent and duration of its rights and claims, and that it has not been influenced in executing this Agreement by any of the other parties hereto or by any person representing them. This Agreement shall not

be deemed to have been drafted by any individual party and shall not thereby be construed against any party.

20. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the matters addressed herein. This Agreement may only be modified by written amendments signed by all parties.

[Remainder of Page Blank; Signature Page Follows.]

[Signature Page.]

Dated: _____

CITY OF SEATTLE

BY: _____

William Schrier, Chief Technology Officer

Dated: _____

WAVEDIVISION HOLDINGS, LLC

BY: _____

Steven B. Weed, CEO

Dated: _____

WAVEDIVISION V, LLC

BY: _____

Steven B. Weed, CEO